

Legal Q&A

**By Scott Houston, TML Director of Legal Services
September 2008**

Q: How can a city address the problem of a lot in the city with weeds and rubbish on it?

A: A city may adopt an ordinance that requires the owner of a lot in the city to keep the lot free from weeds, rubbish, brush, and other objectionable or unsanitary matter. TEX. HEALTH & SAFETY CODE ANN. § 342.004. The city may punish an owner of property who violates the ordinance. TEX. HEALTH & SAFETY CODE § 342.005.

Q: How does a city give a property owner a notice of a violation?

A: The city must give the owner notice of a weedy lot violation, either (1) personally to the owner in writing; or (2) by a letter addressed to the owner at the owner's address as recorded in the appraisal district records. TEX. HEALTH & SAFETY CODE § 342.006(b). Notice is considered delivered even if the U.S. Postal Service returns the notice as "refused" or "unclaimed." TEX. HEALTH & SAFETY CODE ANN. § 342.006(c).

If personal service as described above is not possible, a city may provide notice by: (1) publication at least once; (2) posting the notice on or near the front door of each building on the property; or (3) posting the notice on a placard attached to a stake driven into the ground on the property.

Q: May a city address a second violation in the first notice?

A: Yes. A city may inform the owner in the original violation notice, either by personally delivering the notice or by regular mail *and* a posting on the property, that a second violation of the same kind within one year of the notice date will allow the city, without further notice, to abate the violation at the owner's expense. TEX. HEALTH & SAFETY CODE § 342.006(d).

Q: What action can a city take against an owner of property who fails to remove rubbish or cut weeds?

A: If the owner of the property does not comply with the city's ordinance within seven days of notice of a violation, the city may: (1) do the work; and (2) pay for the work done and charge the expenses to the owner of the property. 342.006(a).

A city may assess expenses and obtain a lien against the property for the expenses. To obtain a lien against the property, the mayor, a municipal health authority, or a municipal official designated by the mayor must file a statement of expenses with the county clerk of the county. The lien statement must state the name of the owner, if known, and the legal description of the property. The lien attaches upon the filing of the lien statement with the county clerk. The lien is security for the expenses and interest accruing at the rate of ten percent on the amount due. TEX. HEALTH & SAFETY CODE § 342.007.

In addition, a city may prosecute a violation of the ordinance in municipal court. TEX. HEALTH & SAFETY CODE § 342.005.

Q: What action may a city take with regards to weeds that are higher than 48 inches?

A: A city may abate, without notice, weeds that have grown higher than 48 inches and that are “an immediate danger to the health, life, or safety of any person.” TEX. HEALTH & SAFETY CODE § 342.008(a).

The city may assess expenses and impose a lien against the property for abatement without notice. TEX. HEALTH & SAFETY CODE § 342.008(f). However, the city must give the owner notice of the abatement within ten days of the date of the abatement, in the same manner as a notice of violation. TEX. HEALTH & SAFETY CODE § 342.008(b).

The notice must also include identification of the property, a description of the ordinance violation, a statement that the city abated the weeds, and an explanation of the owner’s right to request an administrative hearing on the abatement. TEX. HEALTH & SAFETY CODE ANN. § 342.008(c).

If the owner files a written request for a hearing within 30 days of the date of the abatement of the weeds, the city must conduct the hearing within 20 days of the date the request was filed. TEX. HEALTH & SAFETY CODE § 342.008(d), (e).